

**IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
Richmond Division**

<b>ePLUS INC.,</b>	)	
	)	
<b>Plaintiff,</b>	)	<b>Civil Action No. 3:09-CV-620 (REP)</b>
	)	
<b>v.</b>	)	
	)	
<b>LAWSON SOFTWARE, INC.,</b>	)	
	)	
	)	
	)	
<b>Defendant.</b>	)	

**MOTION FOR ENTRY OF ORDER REQUIRING PRODUCTION OF DOCUMENTS  
AND INFORMATION AS TO WHICH THE  
ATTORNEY-CLIENT PRIVILEGE HAS BEEN WAIVED  
AND FOR EXPEDITED BRIEFING**

Plaintiff, ePlus Inc. (“ePlus”), by counsel, moves pursuant to Rule 37 of the Federal Rules of Civil Procedure for the entry of an order that:

- (1) eight documents produced by Lawson are not the proper objects of a “clawback” demanded on January 15, 2012, as a consequence of Lawson’s conscious decisions to produce them rather than inadvertence, or as a consequence of Lawson’s inconsistent assertions of the attorney-client privilege, or both;
- (2) hundreds of entries on Lawson’s Fourth Amended Privilege Log remain incomplete and unclear, and that all documents that are incompletely identified and referenced on the Fourth Amended Privilege Log be produced to ePlus forthwith;
- (3) the attorney-client privilege has been waived as to the subject matter of Lawson’s development of the RQC module, on the ground that the privilege has been

inconsistently described and asserted in Lawson depositions and incompletely and  
inconsistently described in the Fourth Amended Privilege Log; and

- (4) the attorney-client privilege has been waived as to the subject matter of the  
development of the RQC module, on the ground that Lawson knowingly used  
attorney advice as an endorsement of the RQC module to its customers and the  
public, and as an assurance to customers that the RQC product renders certain  
configurations of its procurement software, found to be infringing by this Court, to be  
non-infringing;
- (5) the documents previously clawed-back, redacted and withheld from production under  
the claim of privilege be produced forthwith for the reasons stated in the  
accompanying memorandum.

Pursuant to Local Rule 37(E), counsel for *ePlus* certifies that it has met telephonically  
with counsel for Lawson and that a good faith effort has been made between counsel to resolve  
the discovery matters at issue.

*ePlus* also requests that the Court order expedited briefing of this motion. As the Court is  
aware, the contempt hearing is scheduled to begin on February 27, approximately one month  
from now. In the meantime, the parties must serve expert reports, take expert depositions, and  
prepare the mandatory pre-hearing disclosures, including exhibit lists. In order for *ePlus* to  
timely make use of the information that is the subject of this motion, it respectfully requests that  
the Court resolve this motion and compel the requested information as soon as possible. *ePlus*  
therefore requests that the Court order that Lawson's opposition brief be due on Thursday,  
February 2, and that *ePlus*'s reply brief be due on Monday, February 6.

Respectfully submitted,

January 25, 2012

/s/

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Attorneys for Plaintiff, ePlus Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that on the 25th day of January, 2012, I will electronically file the foregoing

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with the Clerk of Court using the CM/ECF system which will then send a notification of such filing (NEF) via email to the following:

<p>Daniel J. Thomasch, <i>pro hac vice</i> Gibson, Dunn &amp; Crutcher LLP 200 Park Avenue New York, NY 10166-0193 (212) 351-3800</p> <p>Jason C. Lo, <i>pro hac vice</i> Gibson, Dunn &amp; Crutcher LLP 333 South Grand Avenue Los Angeles, CA 90071-3197 (213) 229-7153 VAED-620ExternalServiceList@gibsondunn.com</p>	<p>Daniel McDonald, <i>pro hac vice</i> Kirsten Stoll-DeBell, <i>pro hac vice</i> William D. Schultz, <i>pro hac vice</i> Rachel C. Hughey, <i>pro hac vice</i> Andrew Lagatta, <i>pro hac vice</i> MERCHANT &amp; GOULD 3200 IDS Center 80 South Eighth Street Minneapolis, MN 55402 Telephone: (612) 332-5300 Facsimile: 612) 332-9081 lawsonservice@merchantgould.com</p>
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/s/

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